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FREEDOM OF MOVEMENT

Written statement by the Society for Threatened Peoples,
a non-governmental organization in consultative status
(Category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 July 1995]

Refoulement of Tibetan refugees

1. For a refugee or a stateless or an "alien" person the right of the freedom of movement becomes a crucial right, particularly if the person is escaping from a regime which occupies and rules his or her country with ruthless persecution. Such is the case for Tibetans who escape over the mighty Himalayas into Nepal and India these days, putting their lives at risk from both nature and the concerned authorities. The fate of Tibetan refugees has become precarious as "receiving" countries, notably Nepal and India, are not Contracting States to the Convention relating to the Status of Refugees. It is further unfortunate that the United Nations High Commissioner for Refugees does not recognize Tibetans as refugees.

2. Freedom of movement has been recognized as an important human right when the Universal Declaration of Human Rights was proclaimed on 10 December 1948. Articles 13, 14 and 15 of the Declaration clearly define the meaning of this freedom, including the right to leave any country, including one's own, and to return to that country. The right is further emphasized in article 12 of the International Covenant on Civil and Political Rights. Furthermore, the Convention relating to the Status of Refugees prohibits the expulsion or refoulement of refugees entering a given country since the refugee's "life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (art. 33(1)).

3. In a statement to the fifty-first session of the United Nations Commission on Human Rights this year, Mrs. Sadako Ogata, the United Nations High Commissioner for Refugees, said: "The heart of refugee protection - asylum and non-refoulement - stem from the basic right of all individuals to seek and enjoy asylum from persecution, as clearly embodied in the 1948 Universal Declaration of Human Rights. Similarly, the right to enjoy the protection of one's own country, and to return freely to it, is fundamental to the Declaration."

4. Today, according to information received by this organization, there are approximately 130,000 Tibetan refugees who are living in more than 30 countries, the majority of them in India and Nepal. The Kingdom of Nepal is today the second home for more than 15,000 Tibetan refugees who have lived in the country for the past 35 years. Harassment of Tibetan refugees in the Kingdom has a long history although the carpet industry started by Tibetan refugees in the early 1960s is today the country's second most important foreign investment sector.

5. During the past 15 years more than 10,000 Tibetan refugees have managed to escape the harassment of both Chinese and Nepalese authorities and reach India where their needs are cared for by the Tibetan government in exile. The majority of these refugees, in fact over 70 per cent, are children and students escaping from Tibet for a better education (religious and modern). Since 1989, these new Tibetan refugees have been thoroughly screened by the UNHCR office in Kathmandu. Between August and December 1990, this office documented 1,386 Tibetan refugees who reached Nepal, more than half of whom were monks and nuns.

6. Today more than 90 per cent of the Tibetan refugees attempt to escape into Nepal and India (very few directly) without valid travel documents. This situation arises due to severe restrictions on the issuance and prolonged handling of such documents by the Chinese authorities. It is common for Tibetans in Tibet to wait for years and years in order to get a passport since a long and never ending process has to be followed. An applicant is required to obtain at least seven different local, district, provincial and other governmental authorizations to travel abroad.

7. Furthermore, the Chinese authorities have repeatedly used all their means to bar Tibetans from escaping into Nepal or India. Tibetan escapees who have been apprehended by the Chinese authorities during the past 35 years have faced routine persecution culminating in long prison sentences. Many of these Tibetans were charged with attempting to take out "State secrets" to the

outside world, particularly to the Tibetan government in exile. Maximum restrictions on the freedom of movement of Tibetans is one of the ways through which the Chinese authorities expect to censor all kinds of information on the political situation in Tibet from reaching the outside world.

8. Nevertheless, Tibetan refugees continue to flee from Tibet today risking arrest, torture, harassment and summary execution from both the Chinese and Nepalese authorities. Every year, thousands of Tibetans aged between 6 and 60 risk their lives trekking across the mountains in temperatures that reach 20 degrees below zero. They attempt the 1,600 mile journey on foot to escape Chinese oppression and to seek an audience in India with the Dalai Lama, Tibet's political and spiritual leader. 1/ A number of refugees who complete the journey over the Himalayas lose their toes or fingers, and sometimes their legs, to frostbite. And, when Tibetan refugees are caught by Nepalese police or border guards they are not only robbed of their few belongings (mainly cash and valuables) but also severely beaten and imprisoned before deportation.

9. There have also been extrajudicial killings of Tibetan refugees by both Chinese and Nepalese border forces. In 1989, The Statesman, an Indian daily in New Delhi, reported that seven Tibetan refugees were shot dead by Chinese border guards in the Ladakh-Tibet border region of Chushul. During the early hours of 3 January 1992 a Nepalese policeman shot and killed Tenzin, a 22-year-old Tibetan refugee, at point-blank range in the Nawoche region of Sholu-Khumbu valley in Nepal. The Nepalese Home Ministry official, Mr. R.N. Vaidya, who confirmed the incident on 8 January, said, however, "The police fired on a group of violent intruders who had crossed into Nepal from Tibet across the 19,685-foot Manpa La pass: one of them was found dead later in the morning." Again on 26 August the same year, 18-year-old Rigzin Tsering, a Tibetan monk, was shot twice and killed by the Nepalese border guards in the same region.

10. One of the most serious concerns over the fate of Tibetan refugees entering the Kingdom of Nepal has been the country's total disregard of international law concerning the treatment of refugees. The United Nations Convention relating to the Status of Refugees states in article 33: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Nepal is not a Contracting State to this Convention. However, as a respectable member of the United Nations, it has the customary obligations to respect the Universal Declaration of Human Rights. And, as a country which has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Nepalese authorities must ensure that no refugee entering their country is subjected to torture.

11. Over the past years, the Nepalese authorities have routinely deported Tibetan refugees from Nepal. Documented cases of repatriation of Tibetan refugees by Nepal were as follows: 26 on 17 September 1988; 6 on 30 December 1988; 43 on 7 August 1990; 10 on 11 December 1990; 32 between 16 November and 21 December 1991; 56 between 19 January and 25 June 1992; 20 on 23 April 1995; 33 on 5 May 1995; and 31 on 17 and 18 June 1995. According

to unconfirmed information, there were reports of up to 20 individual deportations a month during 1993 and 1994.

12. There is documented evidence to prove these events in Nepal. On 14 June 1993, the International Campaign for Tibet, a human rights organization based in Washington D.C., stated through a press statement that "a large number" of Tibetan refugees have been "forced" to return to Tibet from Nepal. The organization cited official Nepalese documents in its possession as a proof of this situation. The documents were on Nepalese Ministry of Home Affairs letterheads and were mostly signed by Nepalese and Chinese officials supervising the deportation, the statement added. Many of these documents said that the Tibetan refugees were being sent back "for action and punishment by the laws and regulations" of China. One of the documents even stated that the refugees "do not like Chinese rule and regulation", providing clear evidence that the Nepalese were deliberately deporting and pointing out political refugees, in direct violation of international law.

13. The latest deportation in two separate groups of 31 Tibetans took place on 17 and 18 June after the Tibetan refugees were arrested at a place called Butiban in Baglung district on 11 June. There are now serious concerns over the fate of these 84 Tibetans who faced repatriation from Nepal, particularly on the whereabouts and well-being of three former political prisoners (Dawa, Tsewang Paldhen and Thupten Tsering, all male) in this group. Due to their background of political detention, the Chinese authorities will consider their attempted escape as a planned political activity to be dealt with harshly. The local representative of the United Nations High Commissioner for Refugees, Mr. Tabir Ali, said that there was concern about what he called "the organized manner" in which the Tibetans were being sent back to Tibet. 2/

14. The Society for Threatened Peoples expresses its deep concern over the continued denial of the freedom of movement to the Tibetan people by the Chinese and Nepalese authorities. The Tibetan people who continue to remain under foreign occupation should receive fair treatment whenever they choose to travel to escape from Chinese persecution. In this regard, we urge the Nepalese Government to immediately stop deporting Tibetan refugees entering its territory. We also call on the United Nations High Commissioner for Refugees to provide all necessary assistance to Tibetan refugees as the agency provides for other refugees in the world. The freedom of movement of all human beings should be respected without discrimination based on political pressure.

Notes

1/ Nick Gray, "Escape from Tibet", Life, 19 March 1995.

2/ "Nepal deports more than 100 Tibetan refugees", Voice of America, 25 May 1995, New Delhi.

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